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ALEXANDER L. STEVAS,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-181

ARCHIE PELTZMAN,

Petitioner,

v.

FEDERAL MARITIME COMMISSION,
UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 81-202

ARCHIE PELTZMAN,
Petitioner,

v.

FEDERAL MARITIME COMMISSION
UNITED STATES OF AMERICA,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
For the District of Columbia Circuit

REPLY TO OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

The order of the United States Court of Appeals for the District of Columbia, and the administrative decision by the Federal Maritime Commission legitimizes an illegal pre-hire bargaining agreement in the subsidized, & unsubsidized maritime industry.

This violates the Shipping Act, Labor, anti-trust laws of the United States, & the first amendment right of freedom of association of the U.S. Constitution, & the Norris-Laguardia Act. *(Pet. 9-12).

1. Respondent argues (Opp 8 n8) that petitioners citation of many legal provisions are outside the Commission's jurisdiction, but neglects to mention, that the sworn complaint in this case of violations of the Shipping Act, & other laws have not been investigated or answered or denied by the 185 parties, including the American Mari-

*See the pre-hire Labor Arbitation cases cited, the hiring hall cases cited in the annotation "Application of A Constitutionally based duty of fair representation to union hiring halls," the United States Civil Rights Commission Report on discriminatory practices by referral unions, 1976 reprinted in A. Smith, "Employment discrimination Law," 844, 1978,Title 6 of the Civil Rights Act of 1964, prohibiting employment discrimination in subsidized shipping companies having contracts with Department of Commerce.

time Association & the Pacific Maritime Association (maritime multiemployer bargaining organizations), the American Radio Association, & the Radio Officers Union (unions representing marine radio operators) several ocean common carriers, including Central Gulf. (Opp 4)

Respondents attempt to narrow the sworn complaint to an issue of union security (Opp 4) and thereby to relieve the Commission of its duty to administer the Shipping Act in the broad expansive manner prescribed by this Courts decisions in Federal Maritime Commission v.Pacific Maritime Association, 435 U.S. 40, 1978, Volkswagenwerk Aktsengesellschaft v. F.M.C.; 390 U.S. 261, 1968, & F.M.C. v. Aktiebologet Svenska Amerika Linen (Swedish Am. Line), 390 U.S. 238, 1971, which are dispositive of the questions as to the jurisdiction of the F.M.C. in the Shipping Act, 1916 as amended regarding filing of agreements before the Commission. (Pet19).

2. Petitioner replies to the lack of conflict argument. (Opp 5) by citing the FMC decision *(Pet 33-34a) wherein the Commission adopted the Administrative Law Judges (ALJ) dismissal of the complaint with two exceptions. As authority for these exceptions the Commission cited

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* ... Notwithstanding the last modifying phrase, this statement could suggest that once a particular agreement is determined to be "labor exempt" from the filing & approval requirments of Sec. 15, the activities contenplated by the agreement are also immune from other sections of the Shipping Act, 1916. This result is inconsistent not only with the BSA decision relied on by the Presiding officer, but with Court decisions indicating that action which is "labor exempt" from the reach of section 15 may nevertheless be subject to section 16 of the Act. See e.g. Pacific Maritime Association v. F.M.C., 543 F2d 395, 410, 411 fn 39 (D.C. Cir 1976) reversed on other grounds sub nom. F.M.C. v. Pacific Maritime Ass'n, 435 U.S. 40 (1978); FMC v. Pacific Maritime Ass'n, 435 U.S., supra, at 68, 74-75, (dissent of Justice Powell). Accordingly, the Commission will not adopt the sentence quoted above from page 16 of the Order...

Federal Maritime Commission v. Pacific Maritime Association (supra), and the BSA decision, (United Stevedoring Corp v. Boston Shipping Association), 16 F.M.C. 7, (1972).

This declaration by the Commission refutes the statement (Opp 9) that the Commission correctly concluded that the complaint stated no claim under Sec. 16 & 17 of the Shipping Act of 1916, 46 USC 815 &816.

2. Petitioner's citation of his first amendment rights under international conventions & treaties, (Pet. 12) (freedom to join, or resign, or abstain from joining a union or association) is brushed off as misguided. (Opp. 8 n8). Respondents ignore the landmark international Human Rights case of Young, James & Webster wherein the United Kingdom admitted violation of the European Economic Convention if its closed shop domestic laws caused their discharge, (Pet. 13).

Petitioner argues that the United States Government under its Constitution has a legal & moral obligation to lead the way in Human Rights decisions since both the *E.E.C. & Organization of American States (OAS) have derived their basic documents on freedom of association, & equal employment protection from the U.S. Constitution & its amendments.

3. Finally petitioner argues that the pre-hire exclusive hiring hall referral agreements is a violation of the anti-trust laws, against public policy, & detrimental to the commerce of the United States.

See Anderson v. Shipowners Association

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* See 30 Am. U.L.R. 155, 1980-81, "The American & European Conventions on Human Rights; Similarities & Differences," Thomas Buergenthal.

See Constitutional Protection and the European Convention on Human Rights- An Irish Joke? 44 The Modern Law Review 149, 1981 - Anne Staines.

of the Pacific Coast, 272 US 359, 1926, reversing & remanding. (Syllabus 2):

> A combination between shipowners by which the owners, & operators surrender themselves completely to the control of the resulting association in respect to the employment of seamen on vessels employed in interstate commerce is within the prohibition of the Anti-trust Acts.

In this case the various maritime unions completely control & have a monopoly with respect to employment of seamen. (Pet. 9-11, 17, 18).

The final outcome of the Anderson case was that after two years a trial was held, & the district court held that changed circumstances in the referral practices of the owners association had reduced the percentage of seamen hired to less than fifty percent, 27 F2d 163, 1928. Therefore the association no longer had a monopoly in the hiring of seamen. The Court of Appeals affirmed saying (Syllabus 1):

Evidence held not to show undue interference with free exercise of rights of contract of employment between sailors & shipowners.

31 F2d 539, (9th Cir) 1929. This Court refused certiorari, 279 U.S. 864, 1929.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Archie Peltzman

Archie Peltzman, pro se

October 15, 1982